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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

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CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION, a California for-profit corporation; DOES 1 through 100, inclusive,

Defendants.

No. 157 680

ARMSTRONG'S AMENEDED NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF GRANT OF SUMMARY ADJUDICATION AS TO TWENTIETH CAUSE OF ACTION FOR PERMANENT INJUNCTION; POINTS AND AUTHORITIES; DECLARATION OF FORD GREENE

Date: 12/1/95
Time: 9:00 a.m.
Dept: One

TO ALL PARTIES AND TO THEIR COUNSEL:

PLEASE TAKE NOTICE that on December 1, 1995, at 9:00 a.m. in Department One of the above-entitled Court, or as soon thereafter as the matter can be heard, defendant Gerald Armstrong will move this court for an Order reconsidering its grant of summary adjudication as to the twentieth cause of action of the first amended complaint.

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This motion is brought pursuant to C.C.P. § 1008 and is based on the fact that the Court's grant of summary adjudication is patently erroneous and unfair and that newly discovered evidence increases said unfairness.

DATED: November 16, 1995

HUB LAW OFFICES

By: _____
FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION

I. INTRODUCTION

On a motion for summary adjudication, it is improper for a Court in an exercise of its equity power, to grant a permanent injunction based solely on the content of Armstrong's speech as an "apostate" criticizing what he sees as the immorality of his former religion, while ignoring the fact that Scientology's attorney testified that both parties intended to maintain strict silence about the other?

II. STATEMENT OF FACTS

In response to defendant's argument that the meaning of the contract included an obligation by Scientology to maintain silence with respect to Armstrong (Reporter's Transcript, "RT", Exhibit A to Greene Decl. At 2:15-3:27, 4:15-5:26, 7:1-8:25, 9:14-10:24, 11:19-12:22)[1], the court asserted that it was not required to consider such evidence.

> "Yes, but the facts, those facts are not relevant, and when one reads Witkin, and you can read it, One Witkin Summary of California Law, it's in section [6]84, page 617, the rules of interpretation of written contracts are for the purpose of ascertaining the meaning of the words used therein. Evidence cannot be admitted to show intention independent of the instrument. The words are clear."

(RT 13:2-9)

The court also stated its ruling was based on the following:

> "... the papers submitted has the Los Angeles Superior Court Order. You've referred to Los Angeles and what has taken place there. The Order says, the quote is, the agree terms are clear and unambiguous. The cross-complainant understood, that's your client, understood the terms and signed it. The duties, objections, obligations of agreement are clearly stated. Mutuality and reciprocal duties cannot be read into the unambiguous terms of the agreement. There are no provisions in the agreement prohibiting the cross-defendant from referring to cross-complainant with the press or in legal pleadings or declarations."

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[1] Scientology attorney Lawrence Heller, who is the representative of Scientology depicted on the videotape of Armstrong's signing of the agreement, advised one court in 1989 in a motion to quash a deposition subpena served on Gerald Armstrong (that was based on the agreement) that he "was personally involved in the [1986] settlement" and stated under oath "The non-disclosure obligations were a key part of the settlement agreements insisted upon by all parties involved." (Armstrong's Separate Statement in Opposition to Summary Adjudication on Twentieth Cause of Action at ¶ 101) He further stated, "One of the key ingredients to completing these settlements, insisted upon by all parties involved, was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences with the Church of Scientology; (2) any knowledge possessed by the Scientology entities concerning those staff members or parishioners." (*Id.* at ¶ 102) When Heller spoke to Armstrong on November 20, 1989, Heller stated that Scientology had obligations of non-disclosure as well as Armstrong. (*Id.* at ¶ 103)

(RT 8:25-9:8) [2]

Based on the foregoing reasons, in derogation of California law, the court refused to consider attorney Heller's testimony. Such refusal was legally improper.

III. THE COURT MUST CONSIDER THE HELLER DECLARATION WHICH RAISES TRIABLE ISSUES AS TO WHETHER THE AGREEMENT WAS INTEGRATED AND AS TO THE PARTIES INTENT THAT THE GAG PROVISIONS WERE RECIPROCAL

> "Under California law, '[t]he test of admissibility of intrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the contract is reasonably susceptible.' *Thomas Drayage*, 69 Cal.Rptr. at 564, 442 P.2d at 644. Thus, even if a contract appears to be absolutely clear on its face, the court is required to engage in preliminary consideration of extrinsic evidence to see whether it creates an ambiguity. However, if the extrinsic evidence advances an interpretation to which the contract is not reasonably susceptible, the extrinsic evidence is not admissible. [citation] Further, the mere existence of intrinsic evidence supporting an alternative meaning does not foreclose summary judgment where the extrinsic evidence is insufficient to render the contract susceptible to the non-movant's proffered interpretation. [citation]."

Barris Industries, Inc. v. Worldvision Enterprises, Inc. (9th Cir. 1989) 875 F.2d 1446, 1450 citing *P.G. & E. v. G.W. Thomas Drayage* (1968) 69 Cal.2d 33, 39-40; *Aragon-Haas v. Family Security Insurance Services, Inc.* (1991) 231 Cal.App.3d 232, 240; Witkin, California Evidence, Vol. 2, pp 920-923, § 975-977, pp. 929-934, § 983-986.

In addition to Heller's sworn representations that the reciprocal intent of the parties was to maintain reciprocal silence, Armstrong relies on Scientology's breaches of its obligation to maintain such silence as to Armstrong as excusing him from having to comply with the same requirement as to it. (Separate Statement ¶ 105) [3]

Thus, given the fact that CSI's own attorney has stated that the intent of the parties was to remain mutually silent about one another, a "germ of a potential ... defense" has been raised sufficient to defeat

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[2] Yet another judge who construed the agreement stated, "So my belief is Judge Breckenridge, being a very careful judge ... if he had been presented with that whole agreement and if he had been asked to order its performance, he would have dug his feet in because that is one ... I'll say one of the most ambiguous, one-sided agreements that I have ever read. And I would have not ordered the enforcement of hardly any of the terms if I had been asked to, even on the threat that okay, the case is not settled. [¶] I know we like to settle cases. But we don't like to settle cases and, in effect, prostrate the court system into making an order which is not fair or in the public interest." (*Id.* at ¶ 120)

[3] Among other things, after the settlement, Scientology stated that Armstrong was a perjuror, contemnor, and admitted agent provacteur of the United States Government. (Separate Statement, ¶ 105 (E).

summary adjudication. *Jos. Schlitz Brewing Co. v. Downey Distributor* (1980) 109 Cal.App.3d 908, 917; *Classen v. Weller* (1983) 145 Cal.App.3d 27, 39.

Most importantly, Heller's contradictory statements also implicate important public policy considerations as to the integrity of the judiciary and the lawyers who practice within it. Recently, the Second District Court of Appeal applied principles regarding stipulated reversals of judgment to a civil compromise that affected the right of the state to conduct a criminal prosecution. It stated that "When a court determines that a contract is contrary to public policy, it has a duty to refrain from allowing parties to maintain an action based on that contract. *Bovard v. American Horse Enterprises* (1988) 201 Cal.App.3d 832, 838." *People v. Eisenberg* (November 7, 1995) 95 C.D.O.S. 8643, 8644. As in *Eisenberg*, principles regarding stipulated reversals of judgment to a civil compromise are instructive in this case as well.

> The public interest exception to the presumption that requests for stipulated reversal will be granted cannot be defined by formula, though it will be more likely preesent when the judgment in question involves important public rights, unfair, illegal, or corrupt practices, or torts affecting a significant number of persons. Whether a stipulated reversal would deprive the public of an important benefit must in every case be determined "'from a realistic assessment of all the pertinent circumstances.' [Citation.]" (*California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, 745

Norman I. Krug Real Estate v. Praszker (1994) 22 Cal.App.4th 1814, 821.

That the public has an interest in the integrity of the judicial system cannot be disputed. *River West, Inc. V. Nickel* (1987) 188 Cal.App.3d 1297, 1306 ["The preservation of public trust both in the scrupulous administration of justice and in the integrity of the bar is paramount ... public's interest in an untainted judicial system."]

The settlement agreement at issue, by itself, "involves important public rights, unfair, illegal, or corrupt practices, or torts affecting a significant number of persons," but more importantly because it is <u>one component</u> of a poly-dimensional effort by Scientology to buy its way out of accountability for the consequences of its conduct driven by its Fair Game Doctrine. Thus, the agreement violates the "first principle that the people have the right to know what is done in their courts." *Church of Scientology v. Armstrong* (1991) 232 Cal.App.3d 1060, 1068.

In the initial litigation between Armstrong and Scientology, Judge Paul G. Breckenridge, Jr., specifically found the Scientology organization to be malevolent, in part because the organization "or its minions is fully capable of intimidation [of witnesses, including Armstrong] or other physical or psychological

abuse if it suits their ends." (Armstrong's Separate Statement at ¶ 1 (A), Ex. 1 (A) at 8:3-6. He further provided the following factual findings, inter alia, regarding Scientology:

> In 1970 a police agency of the French Government conducted an investigation into Scientology and concluded "this sect, under the pretext of 'freeing humans' is nothing in reality but a vast enterprise to extract a maximum amount of money from its adepts by (use of) pseudo-scientific theories, by (use of) 'auditions' and 'stage settings' (lit. to create a theatrical scene') pushed to extremes (a machine to detect lies, its own particular phraseology . .), to estrange adepts from their families and to exercise a kind of blackmail against persons who do not wish to continue with this sect." [footnote omitted] From the evidence presented to this court in 1984, at the very least, similar conclusions can be drawn.
>
> In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization is clearly schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH [L. Ron Hubbard]. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile.

Id. at 8:7-9:4. (Emphasis added.)

In contrast to his findings regarding Scientology, Judge Breckenridge found Armstrong and his witnesses to be credible and sympathetic. He wrote:

> As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Homer Schomer to be credible, extremely persuasive and the defense of privilege or justification established and corroborated by this evidence . . . In all critical and important matters, their testimony was precise, accurate, and rang true. The picture painted by these former dedicated Scientologists, all of whom were intimately involved [with the highest echelons of power in] the Scientology Organization, is on one hand pathetic, and on the other, outrageous. Each of these persons literally gave years of his or her respective life in support of a man, LRH [L. Ron. Hubbard], and his ideas. Each has manifested a waste and loss or frustration which is incapable of description.

Id. at 7:9-26. (Emphasis added.)

Since the scope of the settlement agreements' gag provisions specifically included Nancy Dincalci (now Nancy Rodes), Kima Douglas, Laurel Sullivan, and Howard Schomer. (Scientology's Exhibit 1 (B)), it becomes clear that Scientology was seeking to buy its way out of the conclusion that Judge Breckenridge had rendered with respect to its nature and credibility, and to eliminate such persons from ready availability as witnesses in future litigation. The nature of the settlement agreement iS further clarified by looking at its requirements that Armstrong forbear from participating in Scientology's appeal of Judge Breckenridge's opinion (Scientology's Exhibit 1 (A) at ¶ 4-B), assist in its effort to obtain return of documents in *United States*

v. Zolin, [4] and in, furtherance of the gag provisions, to avoid service of process. (Scientology's Exhibit 1 (A) at ¶ 7H.)

Judge Breckenridge's decision was not an isolated abberation. Scientology has a long history of tortious and criminal behavior. [5] With this judicial context, it is inconceivable that there is no question of fact

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[4] *United States v. Zolin*, then Case No. CV 85-0440-HLH (Tx) in the U.S. District Court, Central District of California, which on December 6, 1986 (the date of settlement), was on appeal before the Ninth Circuit. *Armstrong I* was ultimately a subject centrally involved in the Supreme Court opinion reported in *United States v. Zolin* (1989) 109 S.Ct. 2619, 105 L.Ed.2d 469.

Zolin arose from an investigation of L. Ron Hubbard, founder of the Church of Scientology, by Criminal Investigation Division of the Internal Revenue Service ("CID/IRS"). *Id.* 105 L.Ed.2d at 480. In the course of its investigation, the CID/IRS sought access to 49 documents, including two most important tape recordings, that had been filed under seal in *Armstrong I*. *Id.* 105 L.Ed.2d at 481. Scientology sought to block CID/IRS access to the documents in *Armstrong I* by asserting the attorney-client privilege as a basis for injunctive relief obtained in the United States District Court for the Central District of California. Citing the crime-fraud exception to the privilege, the CID/IRS opposed. The District Court upheld the privilege. On appeal the Ninth Circuit affirmed. *Id.* 105 L.Ed.2d at 481-83. The United States Supreme Court addressed whether the attorney-client privilege between Scientology and some of its attorneys should be abrogated on the basis "that the legal service was sought or obtained in order to enable or aid the client to commit or plan to commit a crime or tort." *Id.* at 105 L.Ed.2d at 489. In *Zolin,* the Supreme Court reversed the Ninth Circuit's ruling, in *United States v. Zolin* (9th Cir. 1987) 809 F.2d 1411, that the Government had not made a sufficient showing that there had been "illegal advice . . . given by [Scientology] attorneys to [Scientology] officials" to invoke the crime-fraud exception to the attorney-client privilege. Upon reversing and remanding, the Supreme Court ordered the Ninth Circuit to review partial transcripts of the tape recordings sought by the IRS in the criminal investigation of Scientology to determine whether the crime-fraud exception to the privilege applied. On remand, the Ninth Circuit held:

> **The partial transcripts demonstrate that the purpose of the [Mission Corporate Category Sort Out] project was to cover up past criminal wrongdoing. The MCCS project involved the discussion and planning for future frauds against the IRS, in violation of 18 U.S.C. ¶ 371. [citation.] The figures involved in MCCS admit on the tapes that they are attempting to confuse and defraud the U.S. Government. The purpose of the crime-fraud exception is to exclude such transactions from the protection of the attorney-client privilege.**

United States v. Zolin (1990) 905 F.2d 1344, 1345 (emphasis added.).

Pursuant to Paragraph 7E(c) of the settlement agreement specifically addressing the MCCS tapes in *Zolin,* the Scientology Organization required Armstrong to "assist [the Scientology Organization] in recovering these documents as quickly as possible, including but not limited to these tapes."

[5] *Allard v. Church of Scientology* (1976) 58 Cal.App.3d 439, 443, fn. 1, 447 [Fair Game means "that person 'may be deprived of property or injured by any means by any Scientologist without discipline of the Scientologist. May be tricked, sued or lied to or destroyed.' ... Evidence of such policy statements were damaging to [the Church of Scientology], but they were entirely relevant. They were not prejudicial. A party whose reprehensible acts are the cause of harm to another and the reason for the lawsuit by the other cannot be heard to complain that its conduct is so bad that it should not be disclosed." Practice of Fair Game resulted in setting enemy up for criminal conviction.] *Wollersheim v. Church of Scientology of California* (1989) 212 Cal.App.3d 872, 881-891 [Fair Game was modren-day "Christian inquisition" intended to "neutralize" adversary by stripping him of economic and psychological resources.]; *United States v. Kattar* (1st Cir. 1988) 849 F.2d 118, 125-126 [In the late 1970s, the United States successfully prosecuted a number of high-level Scientologist operatives for various crimes involving illegal break-ins, burglaries and wire taps ... The Church according to the U.S. Attorney, 'launched vicious smear campaigns against those perceived to be enemies of Scientology.' The Church's methods for this included subornation of perjury. The memo also

(continued...)

on the issue that Scienbtology's intention as to the settlement agreement at issue was to "buy [its] way out" *People v. Eisenberg* (November 7, 1995) 95 C.D.O.S. 8643, 8644 quoting *Norman I. Krug Real Estate v. Praszker* (1994) 22 Cal.App.4th at 1823, of having to be accountable for the consequences of its conduct with respect to those whom it had in the past, and would in the future, victimize pursuant to its Fair Game Doctrine.

Under this view, the $800,000 that Scientology paid to Armstrong to dismiss his cross-complaint and maintain silence is not a barometer of the depth of Armstrong's disregard of his word to stick to the settlement. [6] It is a barometer of the value which Scientology placed on the suppression of Armstrong's testimony which was "credible, extremely persuasive and ... corroborated by this evidence . . . In all critical and important matters, . . . was precise, accurate, and rang true" regarding a criminal organization. [7] For this Court to particpate in such a corrupt scheme has "dangerous public policy implications" *Ibid.* because the events set forth above "tend to undermine individual security, personal liberty, or private property, or injure the public or the public good." *Church of Scientology v. Armstrong, supra.* 232 Cal.App.3d at 1068. One result is that "public court business is conducted in private [and then] it becomes impossible to expose

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[5](...continued)
acknowledged the existence of the Fair Game Doctrine as the active animating philosophy of the Church."]; *Church of Scientology v. Commissioner* (1984) 83 U.S. Tax Ct. Rpts. 381, 429-442 ["Petitioner [Church of Scientology of California], its agents, and others willfully and knowingly conspired to defraud the United States ... In pursuit of the conspiracy, petitioner filed false tax returns, burglarized IRS offices, stole IRS documents, and harassed, delayed, and obstructed IRS agents who tried to audit the Church's records. Petitioner gave false information to and concealed relevant information from the IRS about its corporate structure ..."]; *United States v. Hubbard* (D.C. 1979) 474 F.Supp. 64, 70-77, 79, 83-84.

[6] As Armstrong's evidence has illustrated (Separate Statement at ¶¶ 106, 154, 155), he did keep his word for years until Scientology's betrayal of their promises became completely intolerable.

[7] The nature of Scientology continues to be judicially recognized as a live public controversy of great importance. In his Memorandum Opinion, United States District Court Senior Judge John L. Kane Jr. in *Religious Technology Center v. F.A.C.T.NET, INC.; Lawrence Wollersheim and Robert Penny*, United States District Court for the District of Colorado, Case No. 95-K-2143, filed October 3, 1995, found that

> "The alleged copying by the Defendants was not of a commercial nature. Rather, it was for the non-profit purposes to advance understanding of issues concerning the Church which are the subject of on-going public controversy. ... [¶] Defendants maintain and the evidence does not refute that the Lerma postings to the Internet were made in the context of ongoing dialogue in the particular newsgroup to which they were posted. [T]hey form part of the topical debate concerning whether the Works are of substance or are perpetuated as part of systemic mind control. ... As such, the postings may well be considered as having been made for the purposes of criticism, comment or research falling within the fair use doctrine"

Exhibit B, to Greene Decl.)

corruption, incompetence, inefficiency, prejudice, and favoritism." *Ibid.*

Scientology's litigation practices bring the question of judicial corruption into high relief.

On November 14, 1995, in *Church of Scientology International v. Time Warner, Inc.; Time Inc. Magazine Company, and Richard Behar*, the United States District Court, Southern District of New York, Case No. 92 Civ. 30324 (PKL) the court granted summary judgment in favor of Time Magazine as to the following statements:

> In reality the church is a hugely profitable global racket that survives by intimidating members and critics in a Mafia-like manner."
>
> "Says Cynthia Kisser, the [Cult Awareness] network's Chicago-based executive director" 'Scientology is quite likely the most ruthless, the most classically, terroristic, the most litigous cult the country has ever seen. No cult extracts more money from its members.'"
>
> "Those who criticise the church – journalists, doctors, lawyers and even judges so often find themselves engulfed in litigation, stalked by private eyes, framed for fictional crimes, beaten up or threatened with death."

(Exhibit C to Greene Decl. At pp. 7)

In the most stark and blatant terms, this Court has made a judgment call on the facts by regarding Armstrong's veracity and character when it argues or factually concludes that Armstrong has engaged in "double-speak." [8] The judgment call that the Court has made has the most profound impact which stampedes on constitutional rights upon which the public good, trust and interest is necessarily predicated.

IV. THE INJUNCTION VIOLATES THE FIRST AMENDMENT

The inappropriateness of the court's injunction is dramatically underscored by what the court has enjoined: Armstrong's exercise of his right as an apostate to criticize his former religion while his former religion not only assails his reputation and character, but also his Christianist religious beliefs. The court's injunction forces Armstrong, upon penalty of imprisonment, to maintain abject silence in the face of a Scientologist attack upon the root's of Armstrong's Christianist beliefs. Such violates two constitutionally

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[8] It upsets Armstrong greatly that the court refers to him in Orwellian terms as having engaged in "double speak." (RT 4:6) Not only is a credibility determination inappropriate on a motion for summary adjudication, *AARTS Productions, Inc. v. Crocker National Bank* (1986) 179 Cal.App.3d 1061, 1064, said characterization reflects a lack of understanding by the court of the facts. If the contradictory statements of attorney Heller are considered, there is a "germ of a defense" and a factual issue that Armstrong has not engaged in "double speak" at all. Rather, Scientology is engaged in a gargantuan effort to perpetrate a massive fraud on the American Court and the American People. See, discussion of the November 14, 1995 grant of summary judgment on behalf of Time *in Church of Scientology International v. Time Warner, Inc.; Time Inc. Magazine Company; and Richard Behar, infra.*

essential principles.

Justice Brandeis best articulated the value of free speech as the necessary predicate and intelligent core of constitutional liberty in his famous concurrence in *Whitney v. California* (1927) 274 U.S. 357, 375:

> "[The Framers of the Constitution] believed the freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law - the argument of force in its worst form."

Justice Cardozo referred to freedom of speech as "the matrix, the indispenible condition, of nearly every other form of freedom." *Palko v. Connecticut* (1937) 302 U.S. 319, 327.

> [The First] Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public ...

Citizen Publishing Co. V. United States (1969) 394 U.S. 131, 139-140. The reason for protecting the free flow of information is that "[o]ur system of government requires that we have faith in the ability of the individual to decide wisely, if only he is fully apprised of the merits of a controversy." *Eisenstadt v. Baird* (1972) 405 U.S. 438, 457 (Douglas, J., concurring.)

> "... above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. [Citation.] To permit the continued building of our politics and culture, and to assure self-fulfillment for each individual, our people are guaranteed the right to express any thought, free from government censorship. The essence of this forbidden censorship is content control. Any restriction on expressive activity because of its content would completely undercut the 'profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open.' [Citation.]"

Police Department v. Mosley (1972) 408 U.S. 92, 95-96.

The court's injunction violates the public interest, and eviscerates its own ability to fulfill its purpose - the ascertainment of truth. It asserts the Power of Government upon Armstrong to restrain him from participating in discussion of "noxious doctrine," which is "silence coerced by law – the argument of force in its worst form." *Whitney*, 274 U.S. at 375-376.

There is a "germ of a defense" that the instant setttlement agreement violates the public interest because it allows Scientology to "buy its way out" of accountability for the consequences of acting out its Fair

Game Doctrine which can have a devastating impact on"important public rights, unfair, illegal, or corrupt practices, or torts affecting a significant number of persons." Money, even $800,000, cannot be allowed to buy this. If it is, the true doublespeak will be "Justice." Because Scientology is able to "buy away" the legacy of its evil conduct, and continue to use the judicial system as a tool of the destruction of its enemies, Justice will have become Injustice. Such is the irony and the mistake of the Court's injunction. As a matter of law, this enforcement of this contract, by this organization against Armstrong, or any other person, is wrong and cannot be enforced in the way that this Court is enforcing it.

The Court prohibits Armstrong not only from discussing his pre-December 1986 first-hand knowledge of Scientology as a former Scientologist. It prevents him from even partaking in the current raging public controversy on whether Scientology is good or bad, a religion or a cult, a helper or a predator of mankind. He cannot read a newspaper article in the day's paper and discuss the article with another customer while at a coffee house. [9] He cannot possess the article, or even the published opinion.

In addition to the injunction constituting a most egregious prior restraint on pure speech, the nature of the speech which it impacts, is subject to additional First Amendment protection because it is of an independantly religious nature. Armstrong is a Christianist who believes in God and in Jesus and in the Bible. (Separate Statement at ¶ 147, 157, 159)

Although Scientology pays lip service to being compatible with Christianist teachings, (Separate Statement at ¶¶ 160-161), it is anti-christian. (*Id.* At ¶ 162.) Having been secretly taught, an initiated Scientologist beleives that "Christ, God and Heaven are false ideas 'implanted' in humans by electronic means to enslave them." (*Id.* At ¶ 163) Scientology secretly teaches its adherents that its "auditing" procedures are the only way to free mankind from "Christian" slavery and the "Creator of Heaven." (*Id.* At ¶ 164.) Scientology enforces acceptance of its teachings that Christ, God and Heaven are false "implanted" ideas with Scientology's system of "ethics" punishments, its "auditing procedures," and its institutionalized mockery of God and Christ. Any person in Scientology who professed a belief in Christ, or God, or who

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[9] For example, if Armstrong is in San Anselmo drinking coffee tomorrow morning and reads about most of Scientology's case against Time Magazine, he cannot turn to his neighbor and "That's a good decision!" without risking contempt and jail of this Court's injunction. Neither could Armstrong use Time Magazine's May 6, 1991 article as material for discussion with his fellow citizens without running afoul of "silence coerced by law – the argument of force in its worst form." (A copy of the articule, "Scientology: The Cult of Greed" is attached to the Greene Decl. As Exhibit D.

sought help through prayer, was viewed and handled as a "psychotic." (*Idl.* At ¶ 166) As a Christianist, Armstrong believes that this "blasphemes the Holy Spirit, the one unforgiveable sin." (*Id.* At ¶ 167-169.) There are others who share Armstrong's beliefs. (*Id* at ¶ 169-172.)

Speech about religion is speech entitled to the general protections of the First Amendment. This includes descriptions of religious experiences. *Widmar v. Vincent* (1981) 454 U.S. 263, 269, fn. 6.

> "In the realm of religious faith, and in that of political belief, sharp differecnces arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excessess and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democrary."

Cantwell v. Connecticut (1940) 310 U.S. 296, 310.

Armstrong beleives that God has sent him to help the "little people" whom Scientology "persecutes." (Separate Statement at ¶¶ 173-175) "It is a function of speech to free men from the bondage of irrational fears." *Whitney, supra.,* 274 U.S. at 376. Thus, to enforce the Scientologist view while prohibiting any expression of the counterbalancing Christianist view, violates Armstrong's right to freely exercise his religion, even if the sum total of that religion is to register his public dissent to the conduct taken in furtherance of the Fair Game Doctrine.

> "Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard. [¶] It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.

West Virginia State Board of Education v. Barnette (1943) 319 U.S. 624, 641.

Armstrong's views on Scientology were sufficiently supported by evidence and conceptually powerful to convince Judge Breckenridge to make the conclusions he did about Scientology. Even if Armstrong's view were to be relegated to the realm of what is eccentric rather than what is effective, the First Amendment would still compel protection against the Court's prior restraint of his speech.

> We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

Id. At 641-642.

Armstrong's position does go to the heart of the existing order because he asserts that no amount of money, not even $1 million, can buy the truth. He says the First Amendment is not for sale. [10]

The Fourteenth Amendment supports Armstrong's position.

> The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. ... freedoms of speech and of press, of assembly, and of worship may not be infringed on ... slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect.

Id. 319 U.S. at 639. Armstrong engaging in religious speech regarding Scientology presents no " grave and immediate danger" to the State's interest. The only value which supports the injunction is the right to contract. While not to be belittled, such right is also not ultimate.

Just because citizens contracted to purchase homes with the express covenant that said home would never be sold to Africans was insufficient to enforce such racially restrictive covenants. *Shelley v. Kraemer* (1948) 334 U.S. 1. Judicial action is state action and therefore subject to the requirements of the Fourteenth Amednment. *Id.* At 14-18. Just as Black and White people stand equally before the law, so does the Scientologist and the Christianist. The Scientologist cannot use the law to strip the Christianist of his First Amendment Rights without running afoul of the First and Fourteenth Amendments.

All of the speech which the court has ordered repressed is religious in nature because the content of such speech is the criticism of the Scientology religion and its leaders by Armstrong. (Separate Statement ¶138-175) Such prior restraint puts Armstrong in the position that while Scientology may lie about Armstrong to the public, if he in response tells the truth about Scientology, Scientology will have this court jail him for contempt of court. It is the greatest irony that Scientology, a tax-exempt organization that is supposed to

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[10] The Court's reliance on *ITT Telecom Products Corp. v. Dooley* (1989) 214 Cal.App.3d 307, 319 is misplaced. If there had been no agreement between the parties, as testified to by Scientology's attorney Heller, that each side would maintain silence about the other, and Armstrong had voluntarily, knowingly and intelligently agreed that Scientology could say whatever it wanted about him, and that if he said anything back he could be sued, enjoined and jailed, the agreement perhaps could be enforced if Armstrong was competent to enter into such an agreement. Since there is competent evidence from attorney Heller, for the purposes of summary judgment the Court cannot conclude that there is no triable issue whether or not Armstrong's purported waiver of his First Amendment rights was constitutional. Since, however, there is such a triable issue, summary judgment, particularly on an equitable cause of action for a permanent injunction silencing Armstrong is notably without adequate legal basis.

benefit the public, has obtained a court order to silence the words of a former member who warns the public of the danger it presents. Such would be a denial of equal protection of the law, not to mention a violation of the First Amendment's establishment clause.

In order to pass muster under the First Amendment's estasblishment clause, the governmental action must pass a three-pronged test.

> "First the [governmental order] must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion ...; finally the [order] must not foster an excessive governmental entanglement with religion."

Lemon v. Kurtzman (1971) 403 U.S. 602, 612-613. Failure of state action to satisfy any one of the criteria requires invalidation. *Edwards v. Aguillard* (1987) 482 U.S. 578, 583. "[G]overnment cannot exert its authority in the domain of religious conviction. Government may not convey any message of 'endorsement or disapproval' of religious activity, or use its 'power [or] prestige ... to control, support or influence' any matter of religious faith." *United Christian Scientists v. First Church of Christ* (1987) 829 F.2d 1152, 1161-1162.

The injunction fails the last two prongs of this test. The order advances Scientology's religious purpose while its inhibits Armstrong's. It furthers Scientology's Fair Game Doctrine, allowing it to lie about Armstrong, and inhibits Armstrong's dedication to the truth by silencing him in the face of such lies. The order allows Scientology to propagate its belief that God and Jesus aremplants" to enslave man, while at the same time it censors Armstrong's belief that such is blasphemy.

Finally, the order constitutes an excessive entanglement because if Armstrong's conscience cannot allow him to remain silent in the face of such lies, this court in the enforcement of its order will have to jail him for the act of standing up and speaking his convictions, whether the court considers him to be mad or not. It is inconceivable that in our democratic society the Government will enforce a religious edict by jailing a citizen who dares to speak out against it.

V. THE INJUNCTION PREVENTS ARMSTRONG FROM DEFENDING HIMSELF IN OTHER LITIGATION WITH CSI.

On October 10, 1995, in *In re Gerald Armstrong*, U.S. Bankruptcy Court for the Northern District of California, No. 95-10911, and *Church of Scientology International v. Gerald Armstrong*, U.S. Bankruptcy Court for the Northern District of California, A.P. 95-1164, the Court ordered "all direct

testimony at trial shall be in the form of declarations." (Exhibit E [Court's Order filed October 10, 1995] to Greene Decl.) The subject matter of that proceeding is the same as in the instant proceeding (Exhibit F & G [Armstrong's Answer and Order filed October 10, 1995 denying Scientology's motion to strike said Answer] to Greene Decl.) Thus, the instant injunction precludes Armstrong from representing himself in that litigation because he cannot talk to people about Scientology in order to obtain declarations in his own defense. [11] Such is a denial of Armstrong's First Amendment right to redress, Fifth and Fourteenth Amendment rights to due process and to a fair trial, and his Sixth Amendment rights to counsel and to confrontation.

V. THE SEALING ORDER IS UNINTELLIGIBLE AND UNENFORCEABLE

In an act of supreme irony, the court ordered all publicly filed documents in this case possessed by Mr. Greene, Armstrong's counsel "not be distributed to third parties." The public file in this case has been open for public review for almost 4 years as it should be. In Armstrong's own prior litigation, the Court of Appeal held

> "there can be no doubt that court records are public records, available to the public in general ... unless a specific exception makes specific records non public. [Citation.] To prevent secrecy in public affairs public policy makes public records and documents available for public inspection by ... members of the general public ... [Citations.] Statutory exceptions exist [citations], as do judicially created exceptions, generally temporary in nature, exemplified by such cases as Craemer, supra, and Rosato v. Superior Court (1975) 51 Cal.App.3d 190 ..., which involved temporary sealing of grand jury transcripts during criminal trials to protect defendant's right to a fair trial free from adverse advance publicity. Clearly, a court has inherent power to control its own records to protect rights of litigants before it, but, 'where there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed. ... [¶] If public court business is conducted in private, it becomes impossible to expose corruption, incompetence, inefficiency, prejudice and favoritism. For this reason traditional Anglo-American jurisprudence distrusts secrecy in judicial proceedings and favors a policy of maximum access to proceedings and records of judicial tribunals. Thus, in Sheppard v. Maxwell (1966) 384 U.S. 333, 350, the court said it is a vital function of the press to subject the judicial process to 'extensive public scrutiny and criticism.' And the California Supreme Court has said, 'it is a first principle that the people have the right to know what is done in their courts.' (In re Shortridge (1893) 99 Cal. 526, 530) Absent strong countervailing reasons, the public has a legitimate interest and right of general access to court records ...."

Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1068.

There is simply no basis for this Court to order Armstrong's counsel to become subject to Armstrong's agreement. Indeed, since the order is the judicial enforcement of an agreement, said order violates Rule of

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[11] The allegations set forth in Armstrong's Answer stand, Scientology's motion to strike having been denied on October 6, 1995. (Exhibit G to Greene Decl.)

Professional Responsibility 1-500. [12] He has written all the legal arguments in this case. He has represented numerous other former Scientologists from whom he has obtained many Scientology materials and in the course of whose representation he has obtained copies of all documents filed in the instant litigation.

VI. TO THE EXTENT THAT THE AGREEMENT IS IN RESTRAINT OF TRADE, IT IS INVALID.

The enforcement of the agreement prevents Armstrong from working as a paralegal for Ford Greene. Such is an unreasonable restraint of trade.

Business and Professions Code section 16600 provides that, subject to exceptions contained in its chapter, "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind to that extent is void." The Restatement 2d, Contracts § 186 states: "(1) A promise is unenforceable on grounds of public policy if it is unreasonably in restraint of trade. (2) A promise is in restraint of trade if its performance would limit competition in any business or restrict the promisor in the exercise of a gainful occupation."

Although covenants not to compete may be enforceable if for a limited time period, such a covenant in perpetuity is not enforceable. Thus, the lifetime prohibition of Armstrong working as a paralegal is void. [13]

VII. THE HELLER AND LONG DECLARATIONS RAISE TRIABLE ISSUES REGARDING THE DEFENSE OF UNCLEAN HANDS

Assuming without conceding that as a matter of contractual interpretation CSI was not required to maintain silence as to Armstrong, its actions are such as to create a triable issue regarding the defense of unclean hands. (Separate Statement at ¶ 105, 130) Traditionally, the doctrine of unclean hands is invoked when one seeking relief in equity has violated conscience, good faith or other equitable principles in his prior conduct. Accordingly, one who violates his contract cannot have recourse to equity to support that violation. *Fibreboard Paper Prod. Corp. v. East Bay Union* (1964) 227 Cal.App.2d 675, 727. It is a proper defense in a legal action as well as in equity *Id.* at 728.

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[12] Rule 1-500 (A) states: "A member shall not be a party to or participate in offering or making an agreement, whether in connection with the settlement of a lawsuit or otherwise, if the agreement restricts the right of the member to practice law ...."

[13] The preliminary injunction in this case allowed for Armstrong to perform routine clerical tasks for Greene, even on Scientology cases, provided that the same did not involve the communication of knowledge that Armstrong obtained in Scientology. Scientology's order to show cause re contempt against Armstrong for answering the telephone, relaying messages and executing proofs of service in Scientology litigation handled by Greene did not violate the preliminary injunction. (Armstrong's Separate Statement at ¶¶ 23, 37, Exhibits 1 (J)(L).)

> Any unconscientious conduct in the transaction may give rise to the defense. [Citations.] This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. The doctrine is rooted in the historical concept of a court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be 'the abettor of inequity.'"

Burton v. Sosinsky (1988) 203 Cal.App.3d 562, 573-574.

> The equitable principles underlying the clean hands doctrine do not require a finding that Pond was guilty of perjury, concealment or other illegal conduct, '[f]or it is not only fraud or illegality which will prevent a suitor from obtaining equitable relief. *Any unconscientious conduct* upon his part which is connected with the controversy will repel him from the forum whose very foundation is good conscience.

Pond v. Insurance Co. of America (1984) 151 Cal.App.3d 280, 291. The application of the doctrine is primarily a question of fact. *Fibreboard*, 227 Cal.App.2d at 726-727. The defense applies only if the inequitable conduct occurred in a transaction directly related to the matter before the court and affects the equitable relationship between the litigants. *California Satellite Systems, Inc. v. Nichols* (1985) 170 Cal.App.3d 66, 70. The unconscionable conduct must be of such a nature that it would, if permitted to go unnoticed, result in prejudice to the other party. *Soon v. Beckman* (1965) 234 Cal.App.2d 33, 36.

Based on Heller's statements as to the intention of the parties on one hand (Separate Statement ¶ 101, 102), and Scientology's post settlement references to and characterizations of Armstrong as a liar, agent provocateur, and contemnor on the other (*Id.* at ¶105), it is clear that Armstrong has raised a factual issue as to his defense of unclean hands. Scientology cannot state out of one side of its mouth that the keep quiet provisions were mutual and state out of the other side of its mouth the ways in which it says Armstrong is a bad man.

VIII. CONCLUSION

Based on the foregoing points and authorities, defendant Armstrong respectfully submits that his motion for reconsideration should be granted.

DATED: November 16, 1995

HUB LAW OFFICES

By: _____
FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

DECLARATION OF FORD GREENE

I, FORD GREENE, declare:

1. I am an attorney licensed to practice law in the courts of the Sate of California and am the attorney of record for Gerald Armstrong, defendant herein.

2. I personally participated in a hearing before the Department 1 of the above Court on Scientology's3. motion for summary adjudication on its 20th cause of action for a permanent injunction on October 6, 1995. During that hearing I was cut off by the court and prevented from making the appellate record necessary for the proper representation of defendant. A true and correct copy of the transcript of said hearing is attached hereto as Exhibit A.

3. I represent Lawrence Wollersheim in *Wollersheim v. Church of Scientology of California*, Los Angeles County Superior Court, Case No. C 332 027. Mr. Wollersheim is a defendant in an action entitled *Religious Technology Center v. F.A.C.T.NET, INC.; Lawrence Wollersheim and Robert Penny*, United States District Court for the District of Colorado, Case No. 95-K-2143. A true and correct copy of the Memorandum Opinion of the Court, filed therein October 3, 1995, is attached hereto as Exhibit B.

4. I represent Uwe Geertz who was a defendant in a defamation action that Scientology dismissed on the eve of trial in the Central District of California in Church of Scientology International v. Fishman, No. CV 91-6426 HLH (Tx) C.D. Cal which litigation arose out of certain statements attributed to Dr. Geertz in the Time Magaize article entitled "Scientology: The Cult of Greed" published May 6, 1991. A true and correct copy of the Opinion and Order filed on November 14, 1995, in *Church of Scientology International v. Time Warner, Inc; Time Inc. Magazine Company; and Richard Behar*, United States District Court, Southern District of New York is attached hereto as Exhibit C.

5. A true and correct copy of the Time Magaize article entitled "Scientology: The Cult of Greed" published May 6, 1991 in attached hereto as Exhibit D.

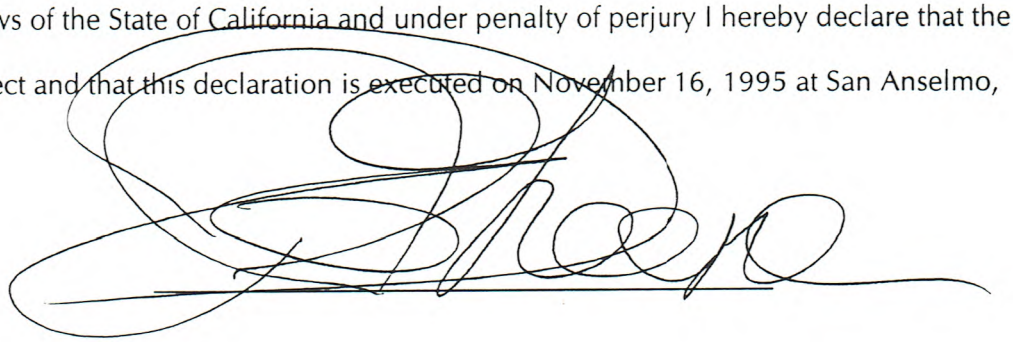
6. In *In re Gerald Armstrong*, U.S. Bankruptcy Court for the Northern District of California, No. 95-10911, and *Church of Scientology International v. Gerald Armstrong,* U.S. Bankruptcy Court for the Northern District of California, A.P. 95-1164 an order filed October 10, 1995, issued from the U.S. Bankruptcy court in litigation between the same parties herein. A true and correct copy of said order is

attached hereto as Exhibit E. Attached hereto as Exhibit F is a true and correct copy of Armstrong's answer in said litigation. Attached hereto as Exhibit G is a true correct copy of the Court's order filed October 6, 1995 in said litigation denying Scientology's motion to strike said Answer.

6. On October 17, 1995, this Court's permanent injunction was filed herein and notice thereof was served by mail on October 18, 1995.

3. The instant motion is brought because the Court cut me off and prevent me from making the record required for appeal and because I believe that this Court's order is, in fact, erroneous. In addition, further facts and law affecting the court's holding has developed after the hearing on October 6, 1995.

Pursuant to the laws of the State of California and under penalty of perjury I hereby declare that the foregoing is true and correct and that this declaration is executed on November 16, 1995 at San Anselmo, California.



PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents:

ARMSTRONG'S AMENDED MOTION OF MOTION AND MOTION FOR RECONSIDERATION OF GRANT OF SUMMARY JUDGMENT AS TO TWENTIETH CAUSE OF ACTION FOR PERMANENT INJUNCTION; POINTS AND AUTHORITIES; DECLARATION OF FORD GREENE

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire — BY PERSONAL SERVICE
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON,ESQ. — BY FAX
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028

[X] (Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee.

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: November 16, 1995